IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

Crl.Rev.Pet.No. 3774 of 2006()

CRA.504/2004 of THE COURT OF ADDL. SESSIONS JUDGE (ADHOC-I), MANJERI.
CC.775/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, MANJERI

.....

REVN. PETITIONER/ APPELLANT/ACCUSED

P. FIROZKHAN, S/O. MUHAMMED,
PARAMBIL HOUSE, EDAVANNA AMSOM,
KUNDUTHODU DESOM.

BY ADV. SRI.T. KRISHNAN UNNI

RESPONDENTS/RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV. SHRI KAMMAPPU.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

.....

CRL.R.P. 3774 OF 2006

.....

Dated this the 14th November , 2006

O R D E R

The petitioner, accused in C..C.No. 775 of 2003 on the file of the court of the Judicial Magistrate of the First Class, Manjeri was convicted under sections 279, 337 and 338 of the Indian Penal Code. The trial court sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for one month for the offence punishable under section 279 of the I.P.C. He was sentenced to undergo simple imprisonment for three months and to pay a fine of Rs. 500/- and in default to undergo simple imprisonment for one month for the offence under section 337 of the I.P.C. The petitioner was also sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for one month for the offence punishable under section 338 of the I.P.C . It

was also held that the sentence shall run concurrently. The driving licence of the accused was ordered to be suspended for a period of one year. On appeal, the appellate court confirmed the conviction and the sentence.

2. The prosecution case is that on 14.09.2003, at about 1.30 p.m., the accused drove the bus, bearing registration No. KL.10/P/1366 in a rash and negligent manner so as to endanger human life through Areacode-Manjeri public road and when it reached the place called Kilikallungal it overturned and thereby C.Ws.2,4,5 and 6 sustained grievous hurt and C.Ws. 1 and 7 to 19 sustained simple hurt.

3..On the side of the prosecution, P.Ws. 1 to 22 and C.Ws. 1 and 2 were examined. P.Ws.1 to 6 and 8 to 14 are injured persons. Of whom, P.Ws. 1, 2, 3, 4, 6 and 9 sustained grievous hurt and others sustained simple hurt. P.W.7 was also a passenger in the bus. But he had not sustained any injury. P.W.15, an eye witness turned hostile . Some of the injured persons also turned hostile and stated that they did not know the reason for the accident. They could not identify the accused. P.Ws. 3,5 and 6 supported the prosecution case. P.W. 3 stated that the accused was the person who drove the vehicle at the time of the accident. It has

come out in evidence that at the time of the accident, it was raining. P.W.5 stated that the accident occurred due to the over speed of the bus. But he could not identify the driver of the bus. P.W.6 identified the accused. But he stated that he does not know the reason for the accident. The medical officers who attended the injured were examined as P.Ws. 16, 17, 19 and 20 and they proved the respective wound certificates. The investigating officer was examined as P.W.18. He registered Ext.P5 F.I.R on the basis of Ext.P1 F.I. Statement and prepared Ext.P6 Scene Mahazar. He also recorded the statement of witnesses. P.W.21 is the Assistant Motor Vehicle Inspector, who inspected the vehicle on 15.08.2003 at the place of occurrence and issued Ext.P21 certificate. It was found by him that the brake system of the vehicle was satisfactory and that the accident was not due to the mechanical defect of the vehicle . P.W. 22, the head constable of Areacode Police station recorded Ext. P1 First Information Statement. The accused surrendered before the police. He was produced before the court and released on bail.

4. The contention raised by the accused before the trial court was

that he was not the driver of the bus at the time of the accident. Ext.P9 trip sheet was seized as per Ext. P6 scene mahazar, wherein the licence number of the bus driver is noted. In spite of the proof of Exts.P6 and P9, the accused persisted that he was not the driver at the time of the accident and that he is not the person who holds the licence No. 3858/94 as shown in Ext.P9 trip sheet. The trial court, therefore, was constrained to invoke jurisdiction under section 311 of the Code of Criminal Procedure to summon the Motor Vehicle Inspectors concerned who were examined as C.Ws. 1 and 2. It is clear from their evidence and the documents produced as Exts. C1 and C2 that the licence number assigned to the petitioner is 3858/94 by the Regional Transport Office, Koduvally. The trip sheet contains that number and therefore, the trial court came to the conclusion that the identity of the accused is established. The trial court relied on the oral evidence of the persons who sustained injuries in the accident and also relied on the scene mahazar and came to the conclusion that the accident occurred due to the rash and negligent driving of the vehicle by the accused. It has come out in evidence and also revealed from the scene mahazar that there is a turning and a gradient at the place

of occurrence. The scene mahazar also shows that there is a clear vision from the place of the accident towards east and west to a distance of 100 metres and 75 metres respectively. There is no case that at the time of the accident, any other vehicle was present at the place of the accident. The oral evidence of the witnesses is corroborated by documentary evidence. The trial court came to the conclusion that the accused is guilty of the offence and he was convicted under sections 279, 337 and 338 of the Indian Penal Code and was sentenced to undergo simple imprisonment as referred to above.

5. The appellate court considered the evidence in detail and confirmed the findings of the trial court and held that the accused drove the vehicle in a rash and negligent manner at the time of the accident.

6. The counsel for the petitioner vehemently argued that there is no acceptable evidence in the case to indicate that the accused was the person who drove the vehicle at the time of the accident and that the evidence of the injured persons cannot be believed to arrive at a conclusion that the accused drove the vehicle in a rash and negligent manner. It is true that the accused took the stand before the trial court

that he was not the person who drove the vehicle . Documents were produced before the court to establish the identity of the accused. C.Ws. 1 and 2 were examined and Exts. C1 and C2 were produced to establish the licence number assigned to the accused, which tallied with the number shown in the trip sheet . On the basis of these materials, it is idle to contend that the identity of the accused is not established . As regards appreciation of evidence, both the courts below considered the evidence in detail and came to the conclusion correctly that the accident occurred due to rash and negligent driving of the accused. There is no ground to interfere in revision as there is no error or illegality or irregularity in the proceedings or findings rendered by the courts below.

7. Learned counsel for the petitioner submitted that the driving licence of the accused was suspended by the trial court for a period of one year and it remains in force. It is also submitted that the accused has permanently stopped his avocation as a driver.

8. Considering the facts and circumstances of the case and the submissions made by the counsel for the petitioner and after hearing the Public Prosecutor, I am of the view that the sentence imposed under

section 338 of the I.P.C. can be reduced to simple imprisonment for a period of three months and to a fine of Rs. 1,000/- and in default of payment of which, the accused shall undergo simple imprisonment for a period of one month. In all other respects, the conviction and sentence imposed by the courts below would stand confirmed.

Crl. Revision Petition is disposed of as above.

K.T. SANKARAN,
JUDGE.

lk